



आरत का गज़ेट The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 2

PART II—Section 2

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० २६] नई विल्हेमी, शुक्रवार, अप्रैल २०, १९७९/चैत्र ३०, १९०१
 No. २६] NEW DELHI, FRIDAY, APRIL 20, 1979/CHAITRA 30, 1901

इस भाग में भिन्न पृष्ठ संलग्न दी जाती हैं जिससे फिर अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation

LOK SABHA

The following Bills were introduced in Lok Sabha on 20th April, 1979:—

BILL NO. 52 OF 1979

A Bill to provide for universalisation of elementary education in India.

BE it enacted by Parliament in the Thirtieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Universalisation of Elementary Education Act, 1979.

Short title,
extent
and
com-
mence-
ment.
Defi-
nitions.

(2) It shall extend to the whole of India.

(3) It shall come into force at once.

2. In this Act, unless the context otherwise requires,—

(a) “economically backward student” means a student the income of whose parent is less than Rs. 1500 per annum;

(b) “Government” means Central Government;

(c) “parent” means father or mother or guardian in case there is no father;

(d) “prescribed” means prescribed by rules made under this Act;

(e) “student” means a boy or girl.

Parent
to send
son or
daughter
to school
compul-
sorily.

3. Every parent shall compulsorily send his son or daughter on completion of five years of age to any elementary school whether it belongs to a local body, Government, or to a private body and shall not stop him/her from going to a school till he/she attains 14 years of age.

Govern-
ment
assis-
tance for
studies.

4. The Government shall supply to every economically backward student, slates, pencils, books, uniforms and other material necessary to further the studies and provide mid-day meals or financial assistance to be prescribed by the Government.

No age
restric-
tion in the
first year
of the
Act.

5. There shall not be any age restriction in the first year of the implementation of this Act for the students to get admission to the first class of the school.

No Gov-
ernment
aid, etc.
on default.

6. On default of sending any boy or girl to school, as provided for hereinbefore, no financial assistance or loan or any aid shall be given to the parent by the Government, or a bank or a cooperative society or any other quasi-Government organisation.

Power to
frame
rules.

7. The Government may frame rules to carry out the purposes of this Act.

STATEMENT OF OBJECTS AND REASONS

Though many States have passed Acts regarding compulsory education they are not being implemented because the measures therein are not adequate. Unless the poor students are helped by the Government to get slates, books, uniforms and mid-day meals or financial assistance is given to the economically backward students, the parents will not be able to send the children to schools. Therefore, this Act envisages the supply of the above things to the students.

In the villages, some boys and girls come to school later than prescribed age due to their special circumstances. In the first year they should be given exemption of age.

Even after providing the above facilities or financial assistance some parents may not send their children to the school. Therefore, the necessity of this Bill.

NEW DELHI;
March 9, 1979,

P. RAJAGOPAL NAIDU.

FINANCIAL MEMORANDUM

Clause 4 of the Bill fixes up the responsibility of the Government for providing books, slates, uniforms, mid-day meals or financial assistance to the economically backward students. The expenditure on this account may work out to Rs. 100 crore per annum which would be met from the Consolidated Fund of India.

No non-recurring expenditure is likely to be incurred in case the Bill is enacted.

DELEGATED LEGISLATION

Clause 7 of the Bill empowers the Government to frame rules to carry out the purposes of the Bill. Under clause 4, Government will have to prescribe the financial assistance to be given to the economically backward students in case the books, mid-day meals and uniforms, etc. are not given to them. As the rules will relate to matters of detail, the delegation of legislative power is of a normal character.

BILL No. 47 OF 1979

A Bill further to amend the Provisional Collection of Taxes Act, 1931.

Be it enacted by Parliament in the Thirtieth Year of the Republic of India as follows:—

Short title
and commen-
tment.

Amend-
ment of
section 4.

Amend-
ment of
section 5.

1. (1) This Act may be called the Provisional Collection of Taxes (Amendment) Act, 1979.

(2) This Act shall come into force at once.

2. In clause (c) of sub-section 2 of section 4 of the Provisional Collection of Taxes Act, 1931 (hereinafter referred to as the principal Act), for the words "seventy-fifth day", the words "ninetieth day" shall be substituted.

16 of 1931.

3. In sub-section (1) of section 5 of the principal Act, for the words "seventy-fifth day", the words "ninetieth day" shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The Provisional Collection of Taxes Act, 1931, amended in 1964, provides that a "declared provision", meaning thereby a provision in Bills relating to imposition or increase of duties of customs or excise, shall have the force of law immediately on the expiry of the day on which the Bill containing it, is introduced in Parliament, and further a "declared provision" shall cease to have the force of law on the expiry of the seventy-fifth day after the day on which the Bill containing it was introduced. The Act also provides that where a "declared provision" comes into operation as an enactment in an amended form, before the expiry of the seventy-fifth day after the day on which the Bill containing it was introduced, refunds shall be made of all duties collected which would not have been collected if the provision adopted in the enactment had been the "declared provision".

The parent Act of 1931 provided for a period of only sixty days which was, however, raised to seventy-five days by the 1964 amendment. Experience over the years has demonstrated that the period of seventy-five days is hardly adequate for a full and satisfying discussion of the General Budget, the Demands for Grants of various Ministries, and the Finance Bill which comes last and whose provisions are governed by the Provisional Collection of Taxes Act. More often than not, the Lok Sabha has witnessed an unfortunate trend towards hustling even bulldozing of the debates for want of time, and invariably quite a sizeable number of Ministries' Demands have been guillotined every year so as to enable the House to pass the Finance Bill in order to meet the deadline, keeping in mind the compelling requirement of the passage of the Finance Bill in Rajya Sabha as well.

Parliament thus fails to exercise its essential constitutional obligation not to relax its strict vigilance over the functioning of Ministries and Departments of the Government, and the constraints of the time factor are likely to result in some Ministries' Demands for Grants remaining unscrutinized during the entire quinquennial term of the Lok Sabha. This should not be allowed to happen if Parliament as the kingpin of our parliamentary democratic system is to be made well and truly effective. It is, therefore, imperative that during the Budget Session more time should be found for a meaningful discussion of all the Ministries' Demands before the Finance Bill is taken up.

It is, therefore, proposed to increase the period of seventy-five days in the present Act to ninety days. This Bill seeks to achieve this object.

HARI VISHNU KAMATH.

NEW DELHI;

The 15th March, 1979.

BILL NO. 53 OF 1979

A Bill to declare the Saraswati Mahal Library at Thanjavur to be an institution of national importance and to provide for its administration and certain other connected matters.

Be it enacted by Parliament in the Thirtieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title and commencement.

Declaration of Saraswati Mahal Library as an institution of national importance.

1. (1) This Act may be called the Saraswati Mahal Library Act, 1979.
(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
2. It is hereby declared that the Saraswati Mahal Library at Thanjavur in the State of Tamil Nadu is an institution of national importance.

3. In this Act, unless the context otherwise requires,—

Defini-
tions.

- (a) "Board" means the Board established under section 4;
- (b) "Chairman" means the Chairman of the Board;
- (c) "Fund" means the Fund referred to in section 19;
- (d) "library" means the Saraswati Mahal Library declared to be an institution of national importance under this Act;
- (e) "member" means a member of the Board and includes the Chairman;
- (f) "prescribed" means prescribed by rules made under this Act;
- (g) "State Government" means the Government of Tamil Nadu;
- (h) "Trust" means the scheme of trust settled by the Governor of Fort St. George in Council for the administration of the 'Tanjore Maharaja Serfoji's Saraswati Mahal' Endowment by notification No. 148 dated the 5th day of October, 1918.

CHAPTER II

THE SARASWATI MAHAL LIBRARY BOARD

4. (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be established for the purposes of this Act, a Board to be known as the Saraswati Mahal Library Board.

Establish-
ment
and
incorpora-
tion of
Board.

(2) The Board shall be a body corporate with the name aforesaid, having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and contract, and may, be that name, sue and be sued.

5. (1) The Board shall consist of the following persons, namely:—

Composi-
tion of
Board.

(a) The Governor of Tamil Nadu, *ex-officio*, Chairman;

(b) the Accountant General, Tamil Nadu, *ex-officio*;

(c) a person to be nominated by the Central Government, who shall be a member of the family of the late Raja Serfoji, Maharaja of Tanjore;

(d) eight persons, four each to be nominated by the Central Government and the State Government, who shall, as far as possible, be persons having knowledge of, and experience in, matters relating to the administration of libraries;

(e) the Director, Saraswati Mahal Library, *ex-officio* Member Secretary.

(2) Every nomination under this section shall take effect as soon as it is notified by the Central Government in the Official Gazette.

Terms of office
and
fresh
nomina-
tion in
certain
cases.

6. (1) The terms of office of nominated members shall be such as may be prescribed.

(2) Any nominated member may resign his office by giving notice in writing to the Central Government or to the State Government, and on such resignation being notified by the Central Government in the Official Gazette, shall be deemed to have vacated his office.

(3) A casual vacancy created by the resignation of a nominated member under sub-section (2) or for any other reason may be filled by fresh nomination by the Central Government or the State Government, as the case may be, and a member so nominated shall hold office for the remaining period for which the member in whose place he is nominated would have held office.

(4) An outgoing member shall be eligible for renomination.

(5) If any nominated member is by infirmity or otherwise rendered temporarily incapable of carrying out his duties or is absent on leave or otherwise in circumstances not involving the vacation of his office, the Central Government or the State Government, as the case may be, may nominate another person to act in his place during his absence.

Vacan-
cies
etc.,
not to
invalidate
acts.

7. No act of the Board shall be invalid merely by reason of —

(a) any vacancy in, or defect in the constitution of, the Board, or

(b) any defect in the nomination of a person acting as a member thereof, or

(c) any irregularity in its procedure not affecting the merits of the case.

Duty of
Govern-
ment
nomina-
ting
persons,
etc.

8. (1) Before nominating a person to be a member of the Board, the Central Government or the State Government, as the case may be, shall satisfy itself that the person will have no such financial or other interest as is likely to affect prejudicially the exercise or performance by him of his functions as a member, and the Central Government or the State Government, as the case may be, shall also satisfy itself from time to time with respect to every member nominated by it that he has no such interest; and any person who is or whom the Central Government or the State Government, as the case may be, proposes to nominate and who has consented to be a member shall, whenever requested by the Central Government or the State Government so to do, furnish to it such information as that Government considers necessary for the performance by it of its duties under this sub-section.

(2) A nominated member who is in any way, directly or indirectly, interested in a contract made or proposed to be made, by the Board shall as soon as possible, after relevant circumstances have come to his knowledge, disclose the nature of his interest at a meeting of the Board and the disclosure shall be recorded in the minutes of the Board and the member shall not take any part after the disclosure in any deliberation or decision of the Board with respect to that contract.

9. (1) The Board shall meet at such times and places and shall, subject to the provisions of sub-sections (2), (3) and (4), observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at meetings) as may be provided by regulations made under this Act.

Meetings
of
Board.

(2) The Chairman or, in his absence, any member chosen by the members present from among themselves, shall preside at a meeting of the Board.

(3) If any nominated member, being an officer of Government, is unable to attend any meeting of the Board, he may, with the previous approval of the Chairman, authorise any person in writing to do so.

(4) All questions at a meeting of the Board shall be decided by a majority of the votes of the members present and voting and in the case of an equality of votes; the Chairman or, in his absence, the member presiding, shall have a second or casting vote.

10. (1) The Board may associate with itself in such manner and for such purposes as may be provided by regulations made under this Act, any person whose assistance or advice it may desire in performing any of its functions under this Act.

Tempo-
rary asso-
ciation of
persons
with
Board
for parti-
cular
purposes.

(2) A person associated with it by the Board under sub-section (1) for any purpose shall have the right to take part in the discussions of the Board relating to that purpose, but shall not, by virtue of this section, be entitled to vote.

11. All orders and decisions of the Board shall be authenticated by the signature of the Chairman or any other member authorised by the Board in this behalf, and all other instruments issued by the Board shall be authenticated by the signature of an officer of the Board authorised in like manner in this behalf.

Authenti-
cation of
orders
and
other
instru-
ments of
Board.

12. (1) Subject to the provisions of sub-section (2), the Board may, for the purpose of enabling it efficiently to perform its functions under this Act, appoint such number of officers and other employees as it may think fit.

Staff of
Board.

(2) The recruitment and conditions of service of such officers and employees shall be such as may be provided by regulations made under this Act.

13. Subject to the provisions of this Act, every person employed in the library immediately before the date of establishment of the Board shall, on and from such date, become an employee of the Board with such designation as the Board may determine and shall hold his office or service therein by the same tenure, at the same remuneration and upon the same terms and conditions as he would have held the same on such date if the Board had not been established and shall continue to do so unless and until his employment in the Board is terminated or until such tenure, remuneration and terms and conditions are duly altered by the Board.

Transfer
of
service
of
existing
em-
ployees to
Board.

Provided that the tenure, remuneration and terms and conditions of service of any such person shall not be altered to his disadvantage without the previous approval of the Central Government.

Location
of
library.

14. The library shall be located at Thanjavur.

CHAPTER III

PROPERTY, LIABILITIES AND FUNCTIONS OF THE BOARD

Property
and
liabilities
of
Board.

15. (1) On the establishment of the Board—

(i) All properties, funds and dues which are vested in, or realisable by, the trustees of the library constituted by the scheme of trust, in their capacity as such, shall vest in, and be realisable by the Board; and

(ii) all liabilities in relation to the library which are enforceable against the said trustees, shall be enforceable only against the Board.

(2) All properties, which may after the establishment of the Board, be given, bequeathed or otherwise transferred to the library or acquired by the Board, shall vest in the Board.

Duties of
Board.

16. (1) Subject to the provisions of the scheme of trust, it shall be the general duty of the Board to manage the library and to plan, promote, organise and implement programmes for the development of the library on modern scientific lines (including the microfilming of rare manuscripts) and to perform such other functions as the Central Government may, from time to time, assign to the Board.

(2) In particular and without prejudice to the generality of the foregoing provision, the Board may take such steps as it thinks fit—

(a) for providing for instruction and research in matters relating to libraries and for the advancement of learning and dissemination of knowledge in such matters; and

(b) to do all such other things as may be necessary for the discharge of its functions under this Act.

Powers
of
Board.

17. (1) Subject to such conditions and restrictions as the Central Government may think fit to impose, the Board may exercise all such powers as may be necessary or expedient for the purpose of carrying out its duties under this Act.

(2) Subject to such regulations as may be made by the Board in this behalf, the Board may from time to time purchase or otherwise acquire such manuscripts, books, articles or things as may, in the opinion of the Board, be worthy of preservation in the library.

CHAPTER IV

FINANCE, ACCOUNTS, AUDIT AND REPORTS

18. For the purpose of enabling the Board to discharge its functions efficiently under this Act, the Central Government may, after due appropriation made by Parliament by law in this behalf, pay to the Board in each financial year such sums of money as that Government considers necessary by way of grant, loan or otherwise.

Grants
by
Central
Govern-
ment to
Board.

19. (1) The Board shall maintain a Fund to which shall be credited—

- (a) all moneys paid by the Central Government;
- (b) such sums of money as the State Government may pay annually;
- (c) all fees and other charges levied under this Act;
- (d) all moneys received by the Board by way of grant, gift, donation, benefaction, bequest, subscription, contribution or transfer;
- (e) all other moneys received by the Board in any other manner or from any other source.

Fund of
Board.

(2) The Board may expend such sums as it thinks fit for performing its functions under this Act and such sums shall be treated as expenditure payable out of the Fund.

(3) A sum of money, not exceeding such sum as may be specified by regulations made under this Act, shall be kept in current account with any nationalised bank, or any other scheduled or other bank approved by the Central Government in this behalf, but any moneys in excess of that sum shall be deposited or invested in such manner as may be approved by the Central Government.

Explanation.—In this sub-section,—

5 of 1970.

(a) “nationalised bank” means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970;

2 of 1934.

(b) “scheduled bank” means a bank included for the time being in the Second Schedule to the Reserve Bank of India Act, 1934.

20. (1) The Board shall, by such date in each year as may be specified by the Central Government, submit to it for approval a budget for the next financial year in the form specified by it, showing the estimated receipts and expenditure, and the sums which would be required from the Central Government during that financial year.

Budget.

(2) If any sum granted by the Central Government remains wholly or partly unspent in any financial year, the unspent sum may be carried forward to the next financial year and taken into account in determining the sum to be provided by the Central Government for that year.

(3) Subject to the provisions of sub-section (4), no sum shall be expended by or on behalf of the Board, unless the expenditure is covered by provision in the budget approved by the Central Government.

(4) Subject to such conditions and restrictions as the Central Government may think fit to impose, the Board may sanction any reappropriation from one head of expenditure to another or from a provision made for one purpose to that for another purpose.

**Accounts
and
audit.**

21. (1) The Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts including the balance sheet in such form as may be specified, and in accordance with such general directions as may be issued by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Board shall be audited annually by the Comptroller and Auditor General of India and any expenditure incurred by him in connection with such audit shall be payable by the Board to the Comptroller & Auditor General of India.

(3) The Comptroller & Auditor General of India and any person appointed by him in connection with the audit of the accounts of the Board shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of Government accounts, and in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect the office of the Board, and the library.

(4) The accounts of the Board as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

**Returns
and
reports.**

22. (1) The Board shall furnish to the Central Government at such time and in such form and in such manner as the Central Government may direct such returns, statements and particulars as the Central Government may, from time to time, require.

(2) Without prejudice to the provisions of sub-section (1) the Board shall as soon as possible after the commencement of each financial year, submit to the Central Government within such time as may be specified by the Central Government a report giving true and full account of the activities of the Board during the previous financial year and an account of activities likely to be undertaken during the current financial year.

CHAPTER V
MISCELLANEOUS

**Powers
of
Central
Govern-
ment to
issue
directions
to
Board.**

23. (1) In the discharge of its functions under this Act, the Board shall be bound by such directions on questions of policy as the Central Government may give to it from time to time:

Provided that the Board shall be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

24. The Board may, by general or special order in writing direct that all or any of the powers or duties which may be exercised or discharged by it shall, in such circumstances and under such conditions, if any, as may be specified in the order, be exercised or discharged also by any member, officer or employee of the Board specified in this behalf in the order.

Delegation
of
powers
and
duties.

25. All officers and employees of the Board shall, when acting or purporting to act in pursuance of the provisions of this Act or of any rule or regulation made thereunder, be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Officers
and em-
ployees
of
Board
to be
public
servants.

26. No suit, prosecution or other legal proceeding shall lie against the Board or any member, officer or employee of the Board for any thing which is in good faith done or intended to be done in pursuance of this Act or of any rule or regulation made thereunder.

Protec-
tion of
action
taken
under
the
Act.

27. (1) The Central Government may, by notification in the official Gazette, make rules to give effect to the provisions of this Act:

Power
of
Central
Govern-
ment to
make
rules.

Provided that when the Board has been established, no such rules shall be made without consulting the Board.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) The term of office of, and the manner of filling casual vacancies among, the members nominated under clauses (c) and (d) of sub-section (1) of section 5;

(b) the travelling and other allowances payable to a member other than the Chairman and to a person associated with the Board under section 10;

(c) The disqualifications for membership of the Board and the procedure to be followed in removing a member who is or becomes subject to any disqualification;

(d) the conditions subject to which, and the mode in which, contracts may be entered into by or on behalf of the Board;

(e) any other matter which has to be or may be prescribed.

(3) Every rule or regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in

such modified form or be no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Power
of
Board
to make
regula-
tions.

28. (1) The Board may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations, not inconsistent with this Act and the rules made thereunder, for enabling it to discharge its functions under this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters namely:—

- (a) the conditions and restrictions subject to which manuscripts and books in the library may be used;
- (b) the manner in which, and the purposes for which persons may be associated with the Board;
- (c) the time and place of meetings of the Board, the procedure to be followed in regard to the transaction of business at such meetings and the quorum necessary for the transaction of business at a meeting;
- (d) the maintenance of minutes of meetings of the Board and the transmission of copies thereof to the Central Government;
- (e) the recruitment and conditions of service of officers and other employees of the Board;
- (f) the persons by whom and the manner in which, payments, deposits and investments may be made on behalf of the Board;
- (g) the maximum that may be kept in the current account;
- (h) the maintenance of registers and accounts;
- (i) the compilation of catalogues and inventories of the manuscripts, books and other articles and things in the library;
- (j) the steps to be taken for the preservation of the manuscripts, books and other articles and things in the library;
- (k) the general management of the library;
- (l) the fees and other charges to be levied for the use of manuscripts and books in the library;
- (m) any other matter in respect of which provision is, in the opinion of the Board, necessary for the performance of its functions under this Act.

(3) The Central Government may, after consultation with the Board, by notification in the Official Gazette, amend, vary or rescind any regulation which it has approved; and thereupon the regulation shall have effect accordingly, but without prejudice to the exercise of the powers of the Board under sub-section (1) and (2).

STATEMENT OF OBJECTS AND REASONS

The Saraswati Mahal Library located at Thanjavur in Tamil Nadu contains a unique treasure of manuscripts and books in Sanskrit, Tamil, Telugu, Kannada, Malayalam, Marathi and other Indian languages on literature, fine arts, religion etc. and rare documents of historical value. They are the precious collections made by the erstwhile rulers of Thanjavur from the 9th century onwards.

The material in the library is widely made use of by research scholars. The library which is now administered by a trust, is in a bad shape with meagre funds, meagre staff and meagre equipment. It needs to be declared urgently as an institution of national importance like the Khuda Bakhsh Oriental Public Library and sufficient funds should be provided to it to acquire additional accommodation, modern equipment used for renovation and preservation of books and materials and to undertake publication of the rare books and documents.

The Bill seeks to attain this object.

[NEW DELHI;

O. V. ALAGESAN.

March 16, 1979.

FINANCIAL MEMORANDUM

The Bill when enacted will enable the Government to set up a Board for the administration of the Saraswati Mahal Library and make grants to that Board. Declaration of that library as an institution of national importance will imply the acquisition of additional accommodation, appointment of additional staff and the acquisition of modern equipment needed for renovation and preservation of the material in the library. All this will involve a recurring expenditure of about five lakhs of rupees from the Consolidated Fund of India. [Clause 17(2) of the Bill].

Clause 18 confers power on the Central Government to pay to the Board in each financial year such sums of money as it may think fit to enable the Board to discharge its functions efficiently.

A non-recurring expenditure of about ten lakhs of rupees is also likely to be incurred to acquire the necessary buildings and equipment.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 27 of the Bill empowers the Central Government to make rules to give effect to the provisions of this Act.

Clause 28 of the Bill empowers the Board to be established under the Act to make regulations to enable it to discharge its functions.

The delegation of legislative power is, therefore, of a normal character.

BILL No. 50 OF 1979

A Bill further to amend the Code of Criminal Procedure, 1973.

Be it enacted by Parliament in the Thirtieth Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Code of Criminal Procedure (Amendment) Act, 1979.

Amend-
ment of
section
125.

2. In section 125 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the principal Act), after sub-section (5), the following sub-section shall be inserted and shall be deemed always to have been inserted, namely:—

“(6) No woman who has been divorced by, or has obtained a divorce from, her husband shall be entitled to receive an allowance under this section if she has received, or if she has been offered and she has refused, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce.

Explanation: Notwithstanding any judgment, decree or order of any court, the payment or offer of payment of the whole amount of the sum referred to in this sub-section, shall be sufficient compliance

with this sub-section and the quantum of the sum shall not be questioned in any court on any ground.”.

3. In section 127 of the principal Act, clause (b) to sub-section (3) shall be omitted.

Amend-
ment of
section
127.

4. Any decree or order of any court made before the date of coming into force of this Act, in so far as it is inconsistent with the provisions of this Act, shall, to the extent of such inconsistency, cease to be effective on and after the date of coming into force of this Act.

A decree
or order
of a court
inconsis-
tent with
the Act
to be in-
effective.

STATEMENT OF OBJECTS AND REASONS

When the Code of Criminal Procedure of 1898 was amended in 1973, section 488 in the old Code dealing with the maintenance of wives and children was replaced by a new section 125. It was provided that if any person having sufficient means neglects or refuses to maintain his wife, unable to maintain herself, a Magistrate may order such person to make a monthly allowance for the maintenance of his wife. Explanation (b) to sub-section (1) of section 125 of the Code of Criminal Procedure, 1973 defined "wife" to include 'a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried'.

2. It was, however, recognised that 'in certain cases under customary or personal law, certain sums are payable to a divorced woman and in case they are paid, the Magistrate's order giving maintenance could be cancelled'. Accordingly, clause (b) was specifically added to sub-section (3) of section 127 to provide for the cancellation of the order where the woman divorced by her husband "has received whether, before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such order".

3. It is significant to note that while moving the amendment to add clause (b) to sub-section (3) of section 127, the Hon'ble Minister of State, Shri Ram Niwas Mirdha categorically stated:—

"As I said, under customary or personal law of certain communities, certain sums are due to a divorced woman. Once they are paid, the Magistrate's order giving maintenance could be cancelled. Now, whether the maintenance should be reasonable or unreasonable is not the point." (Lok Sabha Debates, dated 11-12-1973, Col. 317).

4. It has now been held by the Supreme Court in *Bai Tahira v. Ali Hussain* (AIR 1979 S.C. 362) that no person can claim under section 127(3) (b) absolution from his obligation under section 125 towards the divorced woman except on proof of a payment of sum stipulated by customary or personal law whose quantum is more or less sufficient to do duty for maintenance allowance.

5. The aforesaid judgment clearly ignores the history of the legislation and defeats the very purpose of section 127(3) (b) which was specifically added to avoid encroachment on personal law applicable to the parties, especially the Muslim Personal Law. The Bill, therefore, seeks to rectify the situation.

6. Section 127(3) (b) also creates a procedural difficulty. Two separate stages are involved, one for an order under section 125 and only thereafter the stage under section 127(3) (b) arises. The Bill seeks to simplify the procedure.

NEW DELHI;
March 20, 1979.

G. M. BANATWALLA,

AVTAR SINGH RIKHY,
Secretary.